

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TREETOPS ACQUISITION COMPANY, LLC,

Petitioner-Appellant,

v

TOWNSHIP OF DOVER,

Respondent-Appellee.

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UNPUBLISHED

April 20, 2010

No. 288428

Tax Tribunal

LC No. 00-310043

Before: SERVITTO, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Petitioner, Treetops Acquisition Company, LLC, appeals as of right an opinion and judgment of the Tax Tribunal that established a purchase price for the Treetops Resort and allocated that price among the eight parcels of real property at issue in this appeal to establish their true cash value for tax year 2004. We reverse and remand.

I

On July 10, 2001, Treetops Holding Company entered into a purchase agreement with Melling Resorts International, Inc., for the purchase of the Treetops Resort, which included 31 parcels of real property located in Dover, Corwith, and Livingston Townships, certain personal property, and other business-related items. The original purchase price was \$30,000,000 subject to adjustments. On June 26, 2002, the parties executed an amendment to the purchase agreement, which removed from the sale the liquor license and two parcels of real property located in Corwith Township and reduced the purchase price to \$20,900,000. On July 24, 2002, Treetops Holding Company assigned its right, title, and interest in the purchase agreement to petitioner, who ultimately purchased 29 parcels of real property and three parcels of personal property.

On June 25, 2004, petitioner appealed respondent Dover Township's assessment of 21 of its 24 parcels located in the township to the tribunal.<sup>1</sup> On September 25, 2005, the parties

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<sup>1</sup> Petitioner also appealed the assessment of its six parcels of real property located in Corwith Township. On January 9, 2005, the parties reached an agreement, and petitioner withdrew its  
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entered into a partial consent judgment, which established the true cash value, state equalized value, and taxable value for 12 of the parcels originally appealed. The cumulative true cash value for those 12 parcels was \$2,662,316. Following the entry of the partial consent judgment, eight parcels of real property and one parcel of personal property remained under appeal.

On June 22, 2006, the tribunal defaulted respondent for failing to appear at a prehearing conference. Respondent failed to cure the default and a default hearing was held on October 19, 2006, where petitioner bore the burden of proof to establish the true cash value of the property. See *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). At the hearing, petitioner presented testimony from its appraiser, Thomas D. Kitz, regarding his opinion of the value of the parcels. Kitz concluded that under the income approach, which he deemed the most appropriate valuation method in this case, the fair market value of the parcels at issue was \$9,000,000. An attachment to Kitz's appraisal stated that "the lending bank required buyers to spend about \$3,180,000 on repairing deferred maintenance to the facilities after closing." Under Tax Tribunal rules, respondent could not present any evidence or testimony at the hearing and could not cross-examine petitioner's witness.

The tribunal concluded that petitioner had met its burden of proof to establish that its property was over-assessed, but it had not met its burden of proof in establishing the property's true cash value. It rejected Kitz's appraisal, finding it unreliable, and instead concluded that the most reliable indicator of the true cash value was the purchase price of \$20,900,000. The tribunal then added the \$3,180,000 petitioner expended for deferred maintenance to the purchase price to arrive at the true purchase price of \$24,080,000. The tribunal then subtracted \$2,662,316 (the stipulated value of the 12 Dover Township parcels in the partial consent judgment), \$1,673,600 (the stipulated value of the Corwith Township parcels), and \$4,777,330 (the assessed value of the Dover Township personal property) from the true purchase price, to arrive at a cumulative value of \$14,966,784 for the remaining eight parcels which are the subject of this appeal. The tribunal then assigned each of the eight parcels on appeal a portion of the \$14,966,784 based on the parcel's percentage of the cumulative true cash value as assessed by respondent.

## II

Petitioner attacks the tribunal's valuation on two grounds. First, it argues that the Tax Tribunal committed an error of law and applied a wrong legal principle when it added the deferred maintenance costs to the actual purchase price because there was insufficient evidence to support that the costs were expended immediately after closing or that petitioner knew of them in advance of the sale. Second, petitioner contends that the tribunal's decision was not supported by substantial, competent, and material evidence. "This Court's review of Tax Tribunal decisions is very limited." *Columbia Assocs, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). Absent a claim of fraud, this Court can only determine whether the tribunal committed an error of law or adopted the wrong legal principle. *Id.*; see Const 1963, art 6, § 28.

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appeal. The true cash value of those six parcels was \$1,673,600.

Our Constitution governs the assessment of real and personal property. Const 1963, art 9, § 3 provides, in pertinent part, as follows:

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments.

The “true cash value” of property is synonymous with the “fair market value” of the property. *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). Our Legislature has defined “true cash value” as:

the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. [MCL 211.27(1).]

However, “MCL 211.27(1) does not mandate a single method to arrive at the true cash value.” *Huron Ridge, LP*, 275 Mich App at 28. Indeed, the tribunal is not required to accept either of the parties’ valuation theories. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). Rather, it is duty bound to

apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. . . . Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell. [*Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992) (citations omitted).<sup>2</sup>]

Petitioner concedes that in “certain situations” amounts expended by a purchaser immediately after the purchase are to be included as part of the price for sales comparison purposes. However, petitioner asserts that those situations do not apply in this case. We agree with petitioner that from the evidence in this case, the tribunal could not conclude that petitioner either anticipated making expenditures immediately after the purchase or that the purchase price was reduced as a result of any anticipated expenditures. See The Appraisal Institute, *The Appraisal of Real Estate* (12th ed), pp 434, 454.

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<sup>2</sup> “The three most common approaches for determining true cash value are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach.” *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998).

This Court will not disturb the tribunal's factual findings if they are supported by competent, material, and substantial evidence on the whole record. *Columbia Assocs*, 250 Mich App at 665. "'Substantial evidence' [is] more than a scintilla of evidence, though it may be substantially less than a preponderance of the evidence necessary in most civil cases." *Keith v Dep't of Treasury*, 165 Mich App 105, 107; 418 NW2d 691 (1987). It is the "'amount of evidence that a reasonable mind would accept as sufficient to support a conclusion.'" *Inter Coop Council v Dep't of Treasury (On Remand)*, 257 Mich App 219, 222; 668 NW2d 181 (2003), quoting *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

Here, the tribunal relied on one sentence contained in an attachment to the appraisal to support its decision. While that one sentence did come directly from petitioner's appraisal, and it may have been reasonable for the tribunal to infer its accuracy because Kitz undoubtedly had access to the sales/closing documents to support such an assertion, the sentence provided no insight into the timing of the costs or whether they were anticipated during the purchase-price negotiations. Thus, a reasonable mind would not consider the sentence sufficient to support the tribunal's conclusion that it should be added to the purchase price. With no other evidence in the record about the deferred maintenance costs, we conclude that the tribunal erred in applying this principle to the instant action. Accordingly, the tribunal's opinion and judgment is vacated and this matter remanded for new valuations based on the actual purchase price of \$20,900,000 only.

Additionally, the parties agree that the tribunal erred in failing to consider the five additional parcels that were never appealed when calculating its true cash value for the eight parcels at issue in this appeal. Therefore, on remand, the true cash value of the five omitted parcels should be subtracted before allocating the remaining amount to the eight parcels at issue.

We reverse the tribunal's opinion and judgment and remand this matter for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Jane M. Beckering